

**Summary of Testimony by
Danielle Brian, Executive Director
Project On Government Oversight
before the
House Energy and Commerce Subcommittee on Oversight and Investigations
January 30, 2007**



The National Nuclear Security Administration (NNSA) was created to improve security – and in particular cyber-security – in the nuclear weapons complex. Despite the creation of this agency, security failures continue to plague the complex. Of primary concern has been Los Alamos.

Now, our nation's secrets have been mishandled by Los Alamos – again. Not only has NNSA failed to correct security issues, but it has implemented a new pilot program in which oversight has been handed over to the contractor itself.

Secretary Bodman sent a strong message earlier this month when he asked NNSA Administrator Brooks to step down. But getting a new Administrator is not enough: There needs to be an upheaval in the current system of incentives.

First, there needs to be a renewed commitment to independent federal oversight from the Department of Energy. This means NNSA Headquarters needs to make it a priority to fund oversight, and to promote federal employees who are thorough in their oversight work.

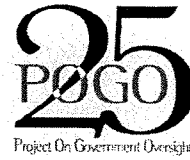
Second, officials at NNSA or Los Alamos should be held accountable if the recommendations made by the DOE Inspector General or the Office of Health, Safety and Security are not implemented, or at least be forced to present a convincing argument to justify why they have not done so.

Third, the Performance Incentive Fee in the Los Alamos contract should be recalculated and equally weighted to reflect the equal importance of accomplishing the mission, ensuring security, and doing so safely. At the very least, DOE should cut the Performance Incentive Fee for the most recent security debacle at Los Alamos. DOE should also disallow costs associated with Los Alamos' failure to perform adequately.

Fourth, POGO recommends that the “at will” employment provision at Los Alamos be changed, because if an employee is the bearer of bad news to management, the employee can be fired “at-will.”

Fifth, Congress should audit the missions currently being conducted at Los Alamos, asking such questions as: Is the disparate nature of the Lab's work making it harder to maintain excellence in safety and security? Is the science being conducted reflecting Congress' sense of the most urgent priorities that could be tackled by these scientists?

And finally, DOE will be submitting a request for \$150 billion to fund a wildly ambitious project to revamp the nuclear weapons complex, known as Complex 2030. Before funding this massive new project, Congress must have confidence in the mission, as well as in the security of the current complex and the safety of its workers.



Testimony of
Danielle Brian, Executive Director
Project On Government Oversight (POGO)
before the
House Energy and Commerce Committee's
Subcommittee on Oversight and Investigations

“Continuing Security Concerns at the Los Alamos National Laboratory”

January 30, 2007

Thank you for inviting me to testify today. I am Danielle Brian, Executive Director of the Project On Government Oversight (POGO), an independent nonprofit that investigates and exposes corruption and other misconduct in order to achieve a more accountable federal government. We have been investigating and exposing security failures in the nuclear weapons complex since 2001 and have issued three reports on the topic so far: *The U.S. Nuclear Weapons Complex: Security at Risk* in 2001, *The U.S. Nuclear Weapons Complex: Homeland Security Opportunities* in 2005, and *The U.S. Nuclear Weapons Complex: Y-12 and Oak Ridge National Laboratory at High Risk* in 2006.

After the Wen Ho Lee debacle of the late 1990s, a brand new, semi-autonomous National Nuclear Security Administration (NNSA) was created to improve security – and in particular cyber-security – in the nuclear weapons complex. Despite the creation of this agency, security failures continued to plague the complex. Of primary concern has been the Los Alamos National Laboratory. Many people, including those of us at POGO, believed the consistently poor performance in security at the Lab was because the same contractor, the University of California (UC), had been running Los Alamos for 60 years without fear of losing its contract – no matter how badly it ran the Lab. There was no incentive to do things well. Finally, after much pressure

Team (NEST) data and which were later discovered with all the fingerprints wiped away behind a Xerox machine.

Now, in the most recent incident, a subcontractor employee freely took over 200 pages of hard-copy classified documents and over 400 classified documents on flash drives to her home, which she shared with a drug dealer.¹ This could only have happened if there was a complete collapse of multiple supervisory and security systems. It was only by happenstance that she was caught, not because an effective security system was in place. We never would have known about this security breach if it hadn't been for a domestic disturbance. Furthermore, we have no way of knowing how many other instances like this are out there but have flown below the radar. It is important to remember that NNSA attempted to keep this incident secret from Congress and the public, until POGO learned about it eight days after a local police raid.

As a side-note, if media reports and statements by investigators are accurate, this most recent case points to extraordinary failures in the personnel security clearance process, in addition to cyber-security failures at the Lab. However, given that this case is still under investigation, we don't believe it is appropriate to discuss the security clearance process in a public session. Furthermore, it is only since this incident that Lab management is recommending that Los Alamos employees be subjected to drug testing, which I understand is very controversial at the Lab. How could it have taken so long to take such a basic step? Even my 16 year-old son had to take a drug test to work at Target, where he straightens up the ketchup bottles.

After the most recent security incident at the Lab, a cyber-security audit was launched. According to a Lab email, which I would like to submit for the record, "As a result of the preliminary findings of [the Cyber Security] audit, LANL has agreed to suspend all non-essential

¹ "Nuclear lab's security scrutinized," CNN, October 26 2006, <http://www.cnn.com/2006/US/10/26/los.alamos/index.html> ; "Drug Raid Yields Los Alamos Documents," by Lara Jakes Jordan, Associated Press Writer, October 25, 2006, <http://www.sfgate.com/cgi-bin/article.cgi?f=/n/a/2006/10/24/national/w162852D72.DTL> ; "New Details Emerge In Los Alamos Case: Top Nuke Lab Data Leak Apparently Discovered During Drug Bust; Officials Search For Ties," CBS News, October 25, 2006, <http://www.cbsnews.com/stories/2006/10/24/national/main2122004.shtml>.

contractor, the University of California, had never tested the fire hoses in the plutonium facility. Despite these and other examples that demonstrate how the Lab minimizes the value of safety and security requirements, NNSA has rewarded the Lab with decreased supervision through the self-policing pilot program.

In addition to mishandling our country's nuclear secrets and repeated safety violations, Los Alamos has also been the home of a litany of corruption and misconduct. Many of you were on the subcommittee that heard the testimony of two top security officials at Los Alamos, Glenn Walp and Steve Doran. They described uncovering crimes ranging from petty theft to organized fraud, and the Lab's active efforts to conceal this misconduct. As thanks for their good work, Walp and Doran were fired and escorted off the property by armed guards. As you may recall, a number of Lab officials were fired over misconduct surrounding the Walp and Doran revelations, and others were sent to prison. What you may not know is that after the furor died down, a number of those individuals were either re-hired or given huge payouts from the Lab. This is clear evidence of a culture that punishes those who raise concerns and protects those who "protect" the Lab from scrutiny.

Auditors at Los Alamos also continue to come to POGO with serious concerns about the auditing and investigations functions at the Lab: Because these functions have been so pared down, and because the contractor has the ability to control and limit access to cost and pricing data, there are no honest, independent reviews to determine how the \$2.2 billion that taxpayers give to Los Alamos annually is spent. In December 2005, the DOE Inspector General supported the claims of whistleblowers, stating their allegations "had merit because our results were similar and Los Alamos officials acknowledged that internal control weaknesses existed"² Yet, rather than being rewarded for their diligence, the whistleblowers were given no work for years and treated as though they themselves were the problem.

² *Assessment of Changes to the Internal Control Structure and their Impact on the Allowability of Costs Claimed by and Reimbursed to Los Alamos National Laboratory under Department of Energy Contract No. W-7405-ENG-36*. Audit Report Number: OAS-V-06-07. U.S. Department of Energy Office of the Inspector General. December 23, 2005.

LOS ALAMOS AS THE BAD CHILD

Despite these other sites that also urgently need addressing, Los Alamos sticks out as the bad child. Why?

There is a joke around the complex that goes something like this: The Secretary of Energy tells the three national labs to jump. Sandia asks how high, Livermore makes an excuse for why it's too busy to jump, and Los Alamos asks who the Secretary of Energy is. Los Alamos sticks out as the bad child because of its consistent and utter disregard for federal oversight.

At this rate, we can all schedule next year's hearing right now, given the likelihood that we'll still be discussing problems at Los Alamos unless the entire incentive system is reversed.

RECOMMENDATIONS

Secretary Bodman sent a strong message earlier this month when he asked NNSA Administrator Brooks to step down. He made it clear he was serious and wanted change. But getting a new Administrator is not enough: There needs to be an upheaval in the current system of incentives.

First, there needs to be a renewed commitment to independent federal oversight from the Department of Energy. In its current state, the Site Office is non-functional. There are apparently over twenty vacant federal positions in that office. Fewer than a handful of qualified security and safety federal experts are charged with overseeing about 15,000 contractor employees over a 40 square-mile area.

This problem was highlighted by both the Mies and Chiles Commissions. In response, NNSA compounded the problem: rather than beefing up the Los Alamos Site Office, NNSA starved it and turned much of its oversight authority over to the contractor. The proper solution would be to install a robust team of qualified safety and security personnel who are empowered

completing the program is vastly more valued than having strong safety and security systems – even though failures in safety and security have repeatedly and adversely affected programs. Those incentives should be changed. At the very least, it is clear that DOE should cut the Performance Incentive Fee for the most recent security debacle at Los Alamos.

Another tool that should be utilized is the cost-reimbursement nature of the Los Alamos contract. HSS Director Podonsky currently has a team of investigators at Los Alamos focusing on enforcing the Price-Anderson Act and trying to determine whether or not to assess a penalty for failure to uphold security standards. Historically, such penalties have generally been small in comparison to the fees the contractors receive, and therefore create little incentive for improvement. This is an opportunity to show the Lab how seriously the government takes safety and security: DOE should disallow costs associated with Los Alamos' failure to perform adequately.

POGO also recommends that the “at will” employment provision at Los Alamos be changed. This type of employment creates a clear disincentive for Lab employees who try to raise concerns: if an employee is the bearer of bad news to management, the employee can be fired “at-will.” Having seen this scenario play out repeatedly over the last few years, it is no wonder that problems fester until they explode. There is no incentive for the employees to step forward given the tenuous nature of their employment. Furthermore, although this “at will” employment policy is not in effect at Livermore, the employee union is very concerned it might be imposed on them if UC wins the contract competition.

Another recommendation is for Congress to audit the missions currently being conducted at Los Alamos. Few people on Capitol Hill are aware of the various missions being performed there. Is the disparate nature of the Lab's work making it harder to maintain excellence in safety and security? Is the science being conducted reflecting the Congress' sense of the most urgent priorities that could be tackled by these scientists? For decades, Los Alamos has operated as a sacred cow with no serious oversight. I hope this is the beginning of a new era.

>>To: Derek Dinwiddie <derekd@lanl.gov>, "James L. Tingey"
<jtingey@lanl.gov>,
>> "M. E. Pansoy-Hjelvik" <meph@lanl.gov>,
>> "Keith W. Fife" <kfife@lanl.gov>,
>> "Tammy M. Dominguez" <tammy@lanl.gov>
>>Cc: "Thomas J. Lex" <tlex@lanl.gov>
>>Subject: Suspension of all Classified Computing Activities
>>From: Shean Monahan <spm@lanl.gov>
>>Date: Wed, 10 Jan 2007 13:52:47 -0700
>>X-Mailer: Apple Mail (2.752.2)
>>X-PMX-Version: 4.7.1.128075
>>
>>Derek, Jim, Lisa, and Keith
>>
>>I just got off a conference call with Bob McQuinn concerning the Cyber

>>Security audit that was suspended last night.
>>
>>As a result of the preliminary findings of that audit, LANL has agreed
to
>>suspend all non-essential classified computing activities for at least

>>the next 48 hours by the close of business today. The definition of
>>"non-essential" has been left to the system owners to determine.
However,
>>Bob McQuinn's guidance is simply to suspend all activities, and if you

>>believe certain classified computing activities are essential that you

>>need to make the case to him and get agreement prior to continuing.
>>Classified computing associated with MCA/Safety concerns/Regulatory
>>compliance have a stronger chance of being allowed to continued, as
>>oppose to programmatic needs. Again the status of the AD-NHHO must be
>>determined by COB today.
>>
>>
>>Shean Monahan
>>Nuclear Criticality Safety
>>Phone: 5.7567
>>Pager: 4.1813
>><mailto:spm@lanl.gov>spm@lanl.gov
>>
>
>Tom Lex
>Safety Basis Director
>6-2269
>

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September 21, 2006

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TELEPHONE:
 (202) 225-2771

The Honorable Samuel W. Bodman
 Secretary of Energy
 U.S. Department of Energy
 1000 Independence Avenue, S.W.
 Washington, D.C. 20585

Dear Secretary Bodman:

As you know, the Committee included a provision in the Energy and Water Development Appropriations bill for fiscal year 2004, and in subsequent fiscal years, mandating the competition of the management and operating contracts for Ames Laboratory, Argonne National Laboratory, Lawrence Berkeley National Laboratory, Lawrence Livermore National Laboratory, and Los Alamos National Laboratory. I am very disappointed with the results of the contract competitions that the Department has conducted to date. The Berkeley and Argonne contracts had no competing bidders. While I hope that the competitive process has yielded some efficiencies and improvements that will benefit the federal taxpayer, those changes will be modest at best. However, I do have some confidence that the Office of Science conducted fair competitions for these laboratory contracts, and will do the same for the upcoming Ames Laboratory competition. With both Berkeley and Ames laboratories being an integral part of university campuses, it is not surprising that other entities are reluctant to bid against the incumbent university contractors.

I am more disturbed by the process that was used to compete the Los Alamos contract. Granted, there were two viable competitors for that contract, and the incumbent University of California was motivated to team with other partners. However, other potential competitors for the Los Alamos contract were discouraged from bidding because of the perception that the Department was determined to award the contract to the incumbent. Potential competitors believed that the Department structured the Request for Proposals for Los Alamos to favor the incumbent contractor and limit the chances of any other competitor winning that contract. That perception proved to be correct.